

The meeting opened at 6:37 p.m.

Present were: Brown (Chair); Bargnesi (Acting Clerk); Oltman, Rechisky, Bordonaro and Wilson (Associate Members).

Petition No.: Z-14-30

Premises affected: 64 Summer Street

Petitioner: ZCR

Participating Members: Brown, Bargnesi, Oltman, Rechisky, Wilson

Brown explained that a letter from Chris Clemente, Inspector of Buildings, was received after the public hearing closed on May 1, 2014 requesting that the Board re-open the public hearing. Rechisky had not read it. Oltman, Bargnesi & Wilson had read it. Bargnesi felt that it was not necessary to re-open the public hearing. Oltman made a motion to re-open the public hearing. The Board voted (4-1) [Bargnesi opposed]. Brown asked for a motion to continue the re-opened public hearing to the July 10, 2014 meeting. Rechisky made a motion to continue the re-opened public hearing to 7/10/14. Wilsons seconded the motion & the Board voted (5-0) to continue to 7-10-14.

Petition No.: Z-14-17

Premises affected: 15 County Rd

Petitioner: South Andover Development

Participating Members: Brown, Oltman, Rechisky, Wilson

Attorney Kathryn Morin, representing the petitioner, submitted written consent to be heard by a 4-member Board, as well as a copy of the building permit for 5 Courtney Ln, a plot plan, & an affidavit. The Board discussed Conservation Commission's Order of Conditions & Special Conditions. Morin noted that she did not represented the petitioner before Conservation, but has been told that the house has not changed, a waiver has been granted for the deck & the location of the house is slightly further south than before. Brown pointed out that the plan submitted tonight is the same as the previous plan with no revision date & no changes. It can't be considered the approved plan. Brown asked if there is any other evidence, other than Mr. Straud's affidavit regarding the non-conforming nature of the existing structure at 15 County Rd. to demonstrate the pre-existing non-conforming status. Morin reminded the Board that the Assessor's record with approximate date of construction 1941 was previously submitted. Other than that, she has not been able to locate any other town or registry records. Brown reiterated his request for a chain of title to demonstrate that the lot hasn't been held in common ownership, since the subject lot is a combination of multiple lots. Morin agreed to trace continuous ownership back to prior to the adoption of the zoning bylaw. Oltman also asked Morin to submit the planned referred to in Conservation's Order of Conditions dated 5/6/14. Morin agreed to obtain it & submit it to the Board. She requested a continuance to 7/10/14. There being no further comments or questions from the public or the Board, Brown asked for a 30-day extension beyond the current deadline. Oltman made a motion to continue the public hearing to 7/10/14. Wilson seconded the motion & the Board voted (4-0) to continue the hearing to 7/10/14.

Approval of 4/3/14 minutes: Rechisky made a motion to approve the 4/3/14 minutes as drafted. Bargnesi seconded the motion & the Board voted (7-0) to approve the 4/3/14 minutes.

Brown then gave an overview of the ZBA process for the public.

#### 7:30 Hearings

Petition No.: Z-14-45

Premises affected: 37 & 41 Porter Rd

The Hall, 2<sup>nd</sup> floor, Memorial Hall Library, 2 N. Main St., Andover

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Petitioner: Fieldstone Meadows

Participating Members: Brown, Bargnesi, Oltman, Rechisky, Wilson (Bordonaro, alternate)

Attorney Mark Johnson requested to be heard second.

Petition No.: Z-14-46

Premises affected: 12-14 Florence St

Petitioner: Eichelroth

Participating Members: Brown, Bargnesi, Oltman, Rechisky, Bordonaro (Wilson alternate)

Paul Eichelroth, owner, & Cindy DeMartino, realtor, were present to request a special permit under Art. VIII, §3.1.3.A.4.a to convert a single family to a two-family dwelling. They submitted an informational booklet documenting the properties use as a 2-family since 1845. DeMartino summarized the documents that include assessors' field cards back to 1946, brokers' listing sheets showing the Daly's purchase in 2007, their conversion of the 1<sup>st</sup> floor kitchen to an office for their business & the change in assessment to a single family in 2009. The Board discussed the original construction as a 2-family, the 2<sup>nd</sup> means of egress already in place from the 2<sup>nd</sup> floor unit and the minimal changes to revert it to a 2-family (all interior). Greg Luckman, 13 Florence St., spoke in support stating that it has been a 2-family for a long time. He voiced concern that exterior lighting will overflow & glare onto abutting properties. Brad Weeden, 5 Summer St. (rear abutter) stated no objection. There being no other questions or comments from the Board neither the public, Bordonaro made a motion to waive the site view & close the public hearing. Oltman seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate. The Board discussed the minimum square lot area per unit in 7.6.2 (2500 sq ft/unit, this lot has 12,000), as well as the fact that the proposal meets all other criteria of 7.6.2 for conversion. Brown noted that there is adequate parking & that the grandfathering of the use was lost with the previous owners' conversion. Bordonaro made a motion to approve the special permit. Oltman seconded the motion & the Board voted (5-0) to approve the special permit. Oltman will write the decision.

Petition No.: Z-14-45

Premises affected: 37 & 41 Porter Rd

Petitioner: Fieldstone Meadows

Participating Members: Brown, Bargnesi, Oltman, Rechisky, Wilson (Bordonaro, alternate)

Attorney Mark Johnson was present on behalf of the petitioner, along with Engineer Bill MacLeod. Fieldstone Meadows (Todd Wacome) is requesting a dimensional special permit for historic preservation. Johnson submitted a summary of the dimensional special permit for historic preservation [adopted by Town Meeting in 2003 to give the Preservation Commission a tool to preserve historic buildings. It is not a rubber stamp for all historic structures, but a lengthy process.] Brown questioned when the subject historic structure was added to the historic register. [January 2014] The current proposal is to subdivide one lot, containing an historic structure, into 2 lots. The new lots will meet all dimensional requirements. MacLeod summarized the plans dated 4/2/14: sheets C1-A & C1-B depict the 2 lots created from another subdivision of the Childs' property & the current proposal divides #41 into 2 conforming lots exceeding required frontage & contiguous upland area. There are some wetlands which the existing driveway crosses & Conservation Commission approved in the Order of Conditions. The historic house will have a garage addition. MacLeod noted that there will be a future application for #37 Porter Rd. The Board inquired when the lot lines depicted on the submitted plan. MacLeod stated that the changes are recent & include the future subdivision of #37. Johnson noted that Preservation Commission has reviewed & is in favor of the proposal. He reminded the Board that the Preservation Commission, Board of Selectmen & the State have to sign all preservation restrictions. The Board asked for the historical significance and documented threat of demolition. Johnson directed the Board to the submittal that

includes the requested information. Joanna Reck, Preservation Commission member & Chair of the Ballardvale Historic District Commission, informed the Board that the house was placed on the historic register in January 2014, approved by the Massachusetts Historic Commission. Reck further informed the Board that the house is in good condition structurally but needs some care. There has been no application for demolition delay. Reck clarified that not all houses are considered in threat of demolition and the criteria used include the house being old, unmaintained, run down house without updates, as well as a cost benefit analysis. Houses with land are in greater jeopardy of demolition. Todd Wacome, applicant, stated that there is no agreement to prevent demolition, but neither is there enough room to keep the house and have it support its own value. The intent is to preserve the house at 41 Porter Road while subdividing, making each lot a bit bigger with a larger house and more valuable. Heather Moody Holman, seller's realtor, pointed out that the site has a septic system & long dirt driveway. In order to update it, the cost would be \$200-300,000. Mimi Chung, neighbor, spoke in support stating that the proposal is reasonable and consistent with the criteria. Ann Childs, owner, stated her support and desire to save the house. There being no other questions or comments from the Board or public, Rechisky made a motion to waive the site view & close the public hearing. Wilson seconded the motion. The Board then proceeded to deliberate. Bordonaro was designated as the alternate. The Board agreed that the proposal qualifies under 7.9.2, but does not meet the standard under 7.9.4. The Board made the following findings:

- A special permit is necessary to preserve the structure, which is in danger of demolition.
- The proposal, under 9.4.2, is not detrimental to the established or future character of the neighborhood.

Wilson made a motion to grant the special permit under 7.9 with the usual conditions. Rechisky seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Bargnesi will write the decision.

Petition No.: Z-14-63

Premises affected: 7 Juliette St

Petitioner: Martin

Participating Members: Brown, Bargnesi, Bordonaro, Rechisky, Wilson (Oltman, alternate)

Jim Martin, owner of 13 yrs, and his architect, Tran, presented the request for a variance &/or special permit to construct additions & alterations to the existing 2-family dwelling in order to eliminate ice dams & improve the 2<sup>nd</sup> floor apt. Part of the project includes installing a 36" wide staircase to code. The existing porch will be demolished, change roof to be more uniform & repair leaks, plus add 6' to the rear. The variance request is for the side & rear setbacks. The house was built in 1948 as a 2-family dwelling. Ray Cunningham, 5 Juliette St, voiced no objection. There being no other questions or comments from the Board or public, Rechisky made a motion to waive the site view & close the public hearing. Bordonaro seconded the motion & the Board voted (6-0) to waive the view & close the hearing. The Board then proceeded to deliberate. Brown first asked the Board to consider whether the request qualifies for a special permit under Section 3.3.5 &/or 3.3.7. It is a small lot with a pre-existing, non-conforming structure that may be older than stated. There is an existing, non-conforming side setback and the request to extend the structure is minor, therefore, section 3.3.5 applies as it would not be detrimental to the neighborhood. Section 3.3.7 does not apply. A variance would not be necessary if the special permit is granted. Bordonaro made a motion to find that the pre-existing, non-conforming structure is an extension of the non-conformity and not detrimental and to grant a special permit under 3.3.5 & to deny all other requested relief as moot. Bargnesi seconded the motion & the Board voted (5-0) to grant the special permit under 3.3.5. Bordonaro will write the decision.

Petition No.: Z-14-64

Premises affected: 8 Virginia Rd

Petitioner: Walshe

Participating Members: Brown, Bargnesi, Bordonaro, Oltman, Wilson (Rechisky, alternate)

The Hall, 2<sup>nd</sup> floor, Memorial Hall Library, 2 N. Main St., Andover

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Ryan Walshe, owner, represented himself in his request for a special permit under Art. VIII, Section 3.1.3.F.4 to create a family dwelling unit within an addition to his single family home. The unit will be occupied by his mother, Beverly Walshe, who is in need of constant care due to a heart condition. She is cared for by Walsh's wife. He noted that the unit has one wall that can be easily removed in the future to incorporate the unit back into the house. Brown explained that a special permit for a family dwelling unit is valid for 5 years and that the kitchen must be removed once Mrs. Walshe no longer occupies the unit. Mary Ryan, of 7 Virginia Rd, voiced no objection. Mike Giordano, 10 Virginia Rd., voiced no objection. There being no other questions or comments from the Board or the public, Rechisky made a motion to waive the site view & close the hearing. Bordonaro seconded the motion & the Board voted (5-0) to waive the view & close the hearing. The Board then proceeded to deliberate. Wilson made a motion to approve the special permit with the usual conditions. Bordonaro seconded the motion & the Board voted (5-0) to grant the special permit with conditions. Wilson will write the decision.

Petition No.: Z-14-65

Premises affected: 22 Shipman Rd

Petitioner: Garofoli

Participating Members: Brown, Bargnesi, Rechisky, Oltman, Wilson (Bordonaro, alternate)

Peter Garofoli, owner, represented himself in his request for a variance from Art. VIII, §4.1.2 &/or for a special permit under Art. VIII, §3.3.5 to construct a new front entryway that will not meet the minimum front yard depth requirement. The house is located in the SRA district & is already located within the front setback. He has spoken with neighbors, none of whom voiced any objection. Garofoli showed pictures/renderings to the Board. The project will remove the existing front door, adding a gable & redoing the façade. There being no other questions or comments from the Board or the public, Rechisky made a motion to waive the site view & close the public hearing. Wilson seconded the motion & the Board voted (5-0) to waive the view & close the hearing. Bordonaro was designated as an alternate. The Board then proceeded to deliberate. Rechisky pointed out that the house is a pre-existing, non-conforming structure as defined by section 3.3.5. While the addition will extend further into the front setback, it is not a detriment. Brown noted that the abutters have also added similar porticos. Bargnesi made a motion to approve the special permit under 3.3.5 with the usual findings & to deny the variance as moot. Rechisky seconded the motion & the Board voted (5-0) to approve the special permit. Brown will write the decision.

Petition No.: Z-14-66

Premises affected: 7 Barnard St

Petitioner: Andover Café LLC

Participating Members: Brown, Bargnesi, Rechisky, Oltman, Bordonaro (Wilson, alternate)

Michael Cammorata, co-owner of LaRosa's, presented the request for a special permit under Art. VIII, §3.1.3.F.8 to place temporary and seasonal outdoor tables & chairs in a courtyard at the rear of the existing restaurant located in the GB district. Access to the proposed outdoor dining is via an alley to be used by customers. The alley exits into the parking lot at the end of the building by another tenant space. There will be a maximum of 20 seats outside. The Board discussed safety concerns, emergency access & the size of tables (2 seats). Cammorata informed the Board that they received notice late summer 2013 that they needed ZBA approval to continue using the space for outdoor dining. It is not possible for emergency vehicles to access the courtyard since the alley is too narrow. The restaurant's hours of operation are from 10 a.m. – 8 p.m. Monday – Wednesday, 10 a.m. – 9 p.m. on Thursday and 10 a.m. – 6 p.m. on Saturday. Aside from the tables/chairs, trash bins will be provided. There being no other questions or comments from the Board or the public, Bordonaro made a motion to close the public hearing. Oltman seconded the motion & the Board voted (5-0) to close the hearing. Wilson was designated as the alternate. The Board then proceeded to

deliberate. The Board discussed the seating plan, restricting the number of tables (Bordonaro pointed out that the landlord's letter stipulates a maximum number of tables), the outdoor dining season (April – October), and conditions adequate to mitigate trash containers, outdoor dining hours to be the same as the restaurant and maximum of 20 seats. Bordonaro made a motion to approve the special permit with the aforementioned conditions. Rechisky seconded the motion & the Board voted (5-0) to approve the special permit with conditions. Rechisky will write the decision.

Petition No.: 3956

Premises affected: 0 Lowell St & 0 Greenwood Rd

Petitioner: Andover Apts Venture, LLC

Participating Members: Brown, Bargnesi, Rechisky, Oltman, Bordonaro, Wilson

Attorney Jim Ward represented the eventual buyers. He reminded the Board that he appeared before them in December to change the funding source. Since then, the equity partner has changed. Brown asked for confirmation that the equity partner changed from Monogram to Andover Apts LLC. Ward confirmed. Brown stated that this is not a public hearing, but a notice of project change. There being no other questions or comments from the Board or the public, Bargnesi made a motion to approve the change in equity partner & the draft decision. Wilson seconded the motion & the Board voted (5-0) to approve the change in equity partner.

Petition No.: 3740

Premises affected: 69 North St

Petitioner: 69 North Street LLC

Participating Members: Brown, Bargnesi, Rechisky, Oltman, Bordonaro, Wilson

Brown announced that this is a public hearing for a requested modification to a comprehensive permit. The request is to replace 48 garden style units with 24 single family dwellings. Present on behalf of the applicant was Geoff Engler, of SEB, and project engineer, Ben Osgood. Engler reviewed the requested substantial change noting that Phase I is under construction. The request is to eliminate two previously approved buildings for the aforementioned 48 garden style units and construct 24 single family units. Density, parking, lighting and building height will all decrease with the proposed change, which they feel is more harmonious & consistent with the neighborhood. Osgood confirmed that the plan dated 6/2/14 is the most up-to-date plan, including changes as a result of the IDR. The newly proposed houses will use the same entrance roadway with water, sewer & utilities provided as before, but with decreased impervious coverage (78,000 sf rather than 92,000 sf) with run-off still to be handled in the pond. DPW will review the engineering. Osgood noted that one underground infiltrator will be replaced with individual infiltrators with each unit and that each unit will have the option of a 1-car or 2-car garage. There will still be parking for 2 cars in the driveway and on-street parking for visitors.

Brown asked Engler to address the economics standard to demonstrate why this requested change affects the economics of the project. Engler explained that the overwhelming market demand is for single family dwellings rather than garden style units and that the cost of construction of the garden style buildings makes the economics better with the proposed change. With the recession, it has taken a lot longer to build and sell units. The proposed change will allow quicker completion of the whole project. Dave Murray, owner of 69 North Street LLC, noted that at the time of the original approval, the market would have supported the garden units. But now, at half density, the project will be better with single family units. The Board asked about the height of the garden unit buildings and whether traffic will change. The garden unit buildings would be 48' high and traffic will decrease 50%. Chet Howe, of Samos Lane and on behalf of the abutting Lawrence Rod & Gun Club, commented that a decrease in the number of affordable units defeats the purpose of 40B. The Board discussed the proportion of affordable units with the proposed change & their distribution. There will be six fewer affordable units. Ronald Deskin, 45 North St., inquired if the total number of

affordable units is still 25% of the total project. Brown confirmed that it is. Engler identified the location of the affordable units. The Board noted that 4 of the 6 affordable units in Phase II back up to the gun club speculating that they'd be harder to sell and effectively setting them apart from the market units. Murray suggested that the Board choose which 6 units shall be affordable. Susan Stott, 30 Pasho St., of Andover Community Trust, affirmed that the affordable units need to be indistinguishable from the market units & spread out equitably throughout the site. She asked how many affordable units have been built & sold. None have been. Engler noted that as soon as the modification is effective, they will market the affordable units and hold a lottery. There are 8 of 12 market units occupied currently. Robert Parin, 37 North St., inquired as to the setbacks. Osgood stated that the rear setback is 25'. Murray added that the existing is 10-12' from the lot line. The Board pointed out that some units are closer. Engler explained that the roadway is wide enough for emergency vehicles & the setbacks will give the units depth. Keith Saxon, 15 Wethersfield Dr., voiced concern for private curbside trash & recycling & the capacity to handle more households. Murray assured him that more household waste can be handled by the contractor, Northside Carting. Chet Howe raised concern over P&S disclosure of gun club & fencing, which has not yet been installed. Murray emphasized that all the P&S documents identify the club & the fence will be installed with the berm soon to minimize disturbance. There will be slight changes to the landscape plan to reflect the landscaping around the new single family homes. Frank Nackel, 4 Webster St., spoke in support. There were some questions & discussion on fencing, pricing, the 2-way traffic pattern, the number of school-aged children, & the lottery process. Engler pointed out that the number of bedrooms will decrease and that his firm will handle the lottery, at which time the sale price will be set. He added that the reference to garden style units in the conditions will need to be deleted. There being no other questions or comments from the Board or the public, Rechisky made a motion to close the hearing. Bargnesi seconded the motion & the Board voted unanimously to close the hearing. The Board then proceeded to deliberate. Bargnesi made a motion to approve the proposed modifications to the comprehensive permit as set forth in the letter dated 5-30-14 and the plans dated 6-2-14 and to incorporate them by reference, including a reduced rear yard setback on some of the additional units. Brown added the change to condition #20 to reference the maintenance obligations striking 'and recyclables...for garden style units'. He asked the petitioner to submit a letter to redistribute the affordable units (1 from the back to an alternate location). Wilson seconded the motion, as amended by Brown, and the Board voted unanimously to approve the changes with conditions.

There being no other business of the Board, Brown made a motion to adjourn the meeting. Oltman seconded the motion & the Board voted unanimously (6-0) to adjourn the meeting at 10:07 p.m.